

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

CENTER FOR INDIVIDUAL  
FREEDOM, INC.,

Plaintiff,

v.

CIVIL ACTION No. 1:08-00190

BETTY IRELAND, et al.,

Defendants.

MEMORANDUM OPINION & ORDER

After hearing from both plaintiff and defendants at the status conference held this 27th day of August, in Charleston, West Virginia, the court finds that defendants bear the burden of moving to set aside this court's April 22, 2008, preliminary injunction. See 43A C.J.S. Injunctions § 396 (2008) ("Application for a modification or vacation of an injunctive decree must be properly presented in the first instance to the trial court which rendered the decree, by the party against whom the injunction has been granted."); Valero Terrestrial Corp. v. McCoy, 50 F. Supp. 2d 564, 569 (N.D. W. Va. 1999), rev'd on other grounds, 211 F.3d 112 (4th Cir. 2000) ("In support of the motion to vacate and to dismiss, the Tax Commissioner and Attorney General argue that recently enacted Senate Bill 178 moots this civil action because that bill repeals and amends the West Virginia statutes that this Court declared unconstitutional in its September 17, 1997 Order to such an extent that their

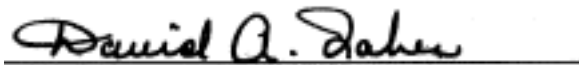
constitutional infirmity, as delineated by this Court, has been removed." ).

Accordingly, in light of the temporal issues raised by the fast approaching general elections, slated for early November of 2008, defendants shall have until Friday, September 5, 2008, to move for vacation of this court's April 22, 2008, preliminary injunction. Plaintiff shall have until Monday, September 15, 2008, to respond. Defendants shall then have until Monday, September 22, 2008, to reply.

The Clerk is directed to mail and fax a copy of this Memorandum Opinion and Order to all counsel of record.

It is **SO ORDERED** this 27th day of August, 2008.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
United States District Judge